

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL



WESTERN RESERVE PROPERTY MANAGEMENT
1703 BROOKPARK ROAD • CLEVELAND, OHIO 44109
PHONE (216) 749-6300

RECEIVED
JUL 8 1996
FCC MAIL ROOM

July 3, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

**In re: Restrictions on Over-the Air Reception Devices, CS Docket No. 96-83
and Preemption of Local Zoning Regulation of Satellite Earth Stations,
IB Docket No. 95-59**

Dear Acting Secretary Caton:

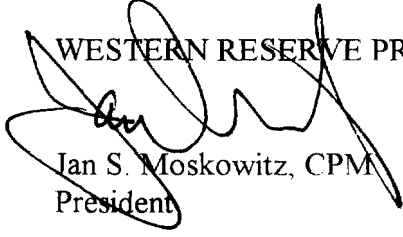
Enclosed herewith is a copy of our lease agreement which I have concerns may contain many terms that could be construed as "non-governmental restrictions" that "impair" viewing, but I am unclear as to how the above captioned rules would apply. I am quite concerned that this uncertainty will create numerous unnecessary disputes with our residents. Consequently, we need clarification and would, therefore, appreciate your guidance in determining which provisions of the enclosed lease agreement contain terms which might be construed as "non-governmental restrictions" or "impairments" under the proposed rules in our case

I, therefore, request that the Federal Communications Commission review our lease form and let us know which provisions would violate either of the proposed rules.

Thank you very much for your prompt response to my request.

Very truly yours,

WESTERN RESERVE PROPERTY MANAGEMENT


Ian S. Moskowitz, CPM
President

JSM:pb
Enclosure



Lease

Made at Cleveland, Ohio, this _____ day of _____, 19____, by _____, hereinafter referred to as "landlord", and _____, hereinafter collectively referred to as "tenant",

Witnesseth:

1. Landlord hereby leases to tenant the Premises hereinafter described upon and subject to all of the terms, provisions, covenants and conditions set forth herein. Tenant has heretofore submitted to landlord a written application for this lease containing certain information requested by landlord (hereinafter referred to as "the application.") All statements made by tenant in the application have been relied upon by landlord as a material inducement for landlord to accept this lease. If at any time prior to the commencement of the term of this lease landlord shall discover that any statement made by tenant in the application is false, landlord, without further inquiry, may elect to declare this lease as null and void by giving written notice thereof to tenant.

2. Premises: Suite No. _____ at _____ (Address) _____ (City), Ohio

Services furnished: Heat (), Water (hot-cold) (). Parking Area (one car) ()

Garage (one car) (), (Carport) (one car) (). Other (specify) ()
(Check items applicable)

Equipment and furnishings provided: Kitchen appliances (), Carpeting (), Air Conditioner (), Other (specify) ()
(Check items applicable)

The suite, garage or carport, the equipment and furnishings described herein and any storage space which may be furnished to tenant are hereinafter collectively referred to as "the Premises."

3. Monthly rental: _____ (\$ _____) due and payable in advance at 1703 Brookpark Rd., Cleveland, Ohio 44109, or at such other address as landlord may from time to time hereafter designate for such purpose, which sum, together with any late charges made by landlord pursuant to the rules and regulations, the tenant agrees to pay on the FIRST (1st) day of each month during the term of this lease.

4. The tenant hereby deposits the sum of \$ _____ Dollars as a security deposit for the faithful performance by tenant of all the terms of the within agreement and not as advance rental, which sum landlord agrees to refund to the tenant, after vacation of the Premises upon termination of this lease or at the expiration of any renewal thereof, provided that all of the terms of this agreement have been fully complied with, less any deductions authorized herein, and without prejudice to any future claim of landlord for damages and/or rent in excess of said sum. Any security deposit in excess of one month's rent shall bear interest as required by Chapter 5321 of the Ohio Revised Code.

5. The term of this Lease shall be for a period of _____ months commencing on the _____ day of _____, 19____, and ending on the _____ day of _____, 19____. Upon the expiration of the original term of this lease the term of this lease shall automatically be extended for successive additional terms of one (1) year each until either party shall elect to terminate this lease by giving written notice thereof to the other not less than sixty (60) days prior to the commencement of any such additional term, in which event this lease shall terminate at the expiration of the then current term. Each of such additional terms shall be upon the same terms, provisions and conditions set forth herein except that landlord shall have the right to increase the security deposit and the rent payable for such additional term and for each additional term thereafter by giving written notice thereof to tenant not less than seventy-five (75) days prior to the commencement of any additional term of this lease. If the tenant shall, with the landlord's written consent, continue to occupy the premises after the termination of this lease without having entered into a new agreement with landlord in writing, such occupancy shall be on a month to month basis only at such rental as may be fixed by the landlord from time to time, but otherwise upon the same terms, provisions and conditions set forth herein.

6. Said Premises shall be used only as a dwelling and for no other purpose and no trade, business or occupation shall be carried on therein; nor shall said Premises or any part thereof be sublet or this lease assigned, nor shall the number of occupants be increased, nor shall any alterations be made to the Premises, without the written consent of the landlord first had, nor shall said Premises be used for any unlawful purpose or for any other purpose that in the judgment of the landlord will injure the reputation of the property of which the Premises are a part.

7. Any temporary interruption in any of the services to be provided by landlord hereunder caused by repairs, shortages, or any other cause beyond the control of the landlord shall not be deemed to be an eviction of tenant, nor shall tenant have any right to damages as a result thereof. All personal property belonging to the tenant or to any other person, located in or about the building or the Premises, shall be there at the sole risk of the tenant or such other person, and neither the landlord nor the landlord's agents shall be liable for the theft or misappropriation thereof, nor for any damage or injury thereto, nor for any damage or injury to said tenant or to other persons or to other property caused by water, snow, frost, steam, heat or cold, dampness, falling plaster, sewers or sewage, gas, odors, noise, the bursting or leaking of pipes, plumbing, electrical wiring and equipment and fixtures of all kinds, or for any act, neglect or omission of other tenants or occupants of the building in which the Demised Premises are located or for any act, neglect or omission of any other person or caused in any other manner whatsoever. Tenant agrees to protect, indemnify and save harmless the landlord from all losses, costs or damages sustained by reason of any act or other occurrence causing injury to any person or property whomsoever or whatsoever due directly or indirectly to the use of the Demised Premises or any part thereof by the tenant. Notwithstanding anything to the contrary in the foregoing provisions of this Paragraph 7, nothing herein contained shall be deemed an exculpation or limitation of any liability of the landlord imposed by law in respect of the Premises or an indemnity against any such liability or its related costs.

8. After reasonable notice (except in the event of any emergency, or if it is impractical to do so), landlord or its agents shall have the right to enter the Premises at any reasonable or necessary time to inspect the Premises, or to exhibit the Premises for sale or rent or in case of fire or other causes, or for any purpose connected with repair, improvement, care and management of the Premises and the building in which the same are situated.

9. If the rent herein provided for shall at any time be in arrears or unpaid, or if the tenant shall violate or fail to observe any of the terms, conditions, rules and regulations set forth and referred to herein, or if the landlord shall at any time discover that any of the statements made by tenant in the application are false, or if the Premises are used in a manner objectionable to the landlord, or if any occupant of the Premises shall disturb or annoy other tenants in the building in which the Premises are situated, the landlord, at its option, and in addition to any other legal or equitable remedy it may have, may take immediate possession of the Premises and may relet the same for the account of the tenant for

such rent, if any, as shall be reasonably obtainable under the circumstances, and without thereby terminating this lease, the tenant remaining liable for any deficiencies, which may be recovered by landlord periodically upon the successive days upon which the rent hereunder is payable or any time thereafter.

10. Upon taking possession of the Premises pursuant to the terms of this lease tenant acknowledges that the Premises are in good order and repair, except for any items of which tenant shall notify landlord in writing within three (3) days after such taking of possession. Tenant agrees to occupy the Premises in a careful, clean, safe and proper manner, to suffer no waste or injury to be done, to pay for any injury or damage occurring to the Premises as a result of tenant's act or negligence and, upon vacating the Premises, to deliver the keys to the landlord or its agent, and to leave the Premises in the same condition, including the condition of cleanliness and sightliness as upon his entry on the same, natural wear and tear excepted, any necessary cost or expense for cleaning, or for damage to the Premises or any part thereof including but not limited to walls, carpeting, equipment, counter and sink tops, kitchen and bathroom fixtures and windows and screens, or the making of new keys to be charged to the tenant which charges may be deducted from the security deposit. Tenant shall promptly notify the landlord in writing, delivered to the office of the development of which the Premises are a part, of any repairs required to the Premises.

11. No music or noise shall be permitted in the Premises which shall be objectionable to the landlord or to any occupants of the said building. Tenant shall not allow anything to be placed on the outside window ledges of the Premises, nor shall anything be thrown by the tenant, or others, out of the windows of the building, or from the porches or steps of the building. Tenant shall not store any property, including, but not limited to, barbecuing and cooking equipment, on the porch or patio of the Premises and tenant shall not use said porch or patio for barbecuing or cooking. No bicycle or other vehicle, nor any animal shall be brought into the Premises, corridors or any part of the building by the tenant, or the tenant's agents, family, employees, or guests without first obtaining the written consent of the landlord. Tenant shall not enter nor store any of the tenant's personal property in the common areas for the buildings in which the Premises are situated.

12. Tenant agrees not to remove any fixtures or appurtenances or cause same to be removed from the Premises, or drive any nails or screws into the walls or woodwork, except as permitted in the rules and regulations, or place any additional lock or fastening device upon any door, without in each case first obtaining written consent from the landlord.

13. Tenant shall not park any commercial vehicles, motorcycles, motor bikes, motor scooters, boats, trailers or campers in the Premises, the buildings in which the Premises are situated, the parking areas for said buildings, or any property used in connection with said buildings without landlord's written consent.

14. Tenant agrees to abide by all rules and regulations which may be established by landlord from time to time or posted in the entranceway or common hallways or rooms of the Premises or the building of which the Premises are a part. Failure to keep and observe said rules and regulations will constitute a breach of the terms of this lease.

15. One or more waivers of any covenant or condition by the landlord shall not be construed as a waiver of a further breach of the same or any other covenant or condition.

16. If any term or provision of this lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the terms and provisions of this lease, and the application of such terms and provisions to persons and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each of such remaining terms and provisions of this lease shall be valid and shall be enforceable to the fullest extent permitted by law.

17. Any additions or improvements made by tenant shall, on the expiration of the term of this lease or its termination in any manner remain on the Premises, and shall become the property of the landlord, unless otherwise agreed to in writing, or landlord may require the tenant to remove the same at the tenant's expense. Tenant shall not erect any structure for storage or aerials in or about the Premises or the buildings in which the same are situated, nor use the roof for any purpose.

18. ALL WINDOW COVERINGS MUST BE WHITE OR HAVE WHITE LINERS.

19. Any notice which either party shall desire or be required to give the other hereunder shall be in writing and if to tenant, said notice may be delivered to the Premises or sent to the Premises by certified or registered mail return receipt requested; and if to landlord, such notice shall be sent to the landlord by certified or registered mail return receipt requested at 1703 Brookpark Road, Cleve-

land, Ohio 44109 or at such other address as landlord may hereafter designate for such purpose.

20. Each of the parties agrees to and does hereby waive all rights of recovery and causes of action against the other and all parties claiming through or under such other, to the extent of their respective insurance coverage, for any damage to the Premises or to the personal property situated therein which may be covered by the fire and extended coverage insurance policies carried by landlord and insuring the Premises or carried by the tenant and insuring the personal property located therein, notwithstanding that any such damage or destruction may be due to the negligence of such other party and of any party claiming through or under such other party, provided that such waiver shall not result in the invalidation of any such insurance or adversely affect the right to recover thereunder.

21. Upon the expiration or earlier termination of this lease any property of the tenant remaining in the Premises shall conclusively be deemed to have been abandoned by the tenant.

22. If the Premises are not available for occupancy on the date of the commencement of the term of this lease for any reason whatsoever, landlord shall not be liable for any damages which may be suffered by tenant as a result thereof and this lease shall remain in full force and effect except that rent shall be abated on a pro rata basis until Premises are available for occupancy by tenant; provided, however, that if the Premises are not available for occupancy by tenant within thirty days after the date of the commencement of the term of this lease, tenant shall have the right to withdraw from this lease by giving written notice thereof to landlord.

28. The name and address of the owner and the person in charge is _____
c/o R. Madow, 7530 Lucerne Drive, Suite #101, Middleburg Heights, Ohio 44130

The name and address of the owner's agent and the person in charge is Moskowitz & Company — Western Reserve Property Management Division,
c/o D. Perkins, 1703 Brookpark Road, Cleveland, Ohio 44109

29. Additional terms: _____

23. Tenant represents and warrants that all statements made by tenant in the application are true and complete. Upon acceptance of this lease by landlord, this lease shall thereupon become binding upon and shall inure to the benefit of the parties hereto, the heirs, personal representatives, successors, and assigns of the landlord and the heirs, personal representatives and permitted assigns of tenant

24. All covenants of landlord contained in the lease shall be binding upon the landlord and its successors in interest only with respect to breach occurring during its and their respective ownership of the landlord's interest hereunder. Moskowitz & Company — Western Reserve Property Management Division is acting in a strictly representative capacity as agent for the landlord and shall not be bound hereby or liable hereunder, nor for any covenant or warranty, expressed or implied, and the obligations of landlord shall be deemed personal to it and not the obligations of the agent.

25. It is understood that the owner's agent will remit the security deposit to the owner who will thereafter be solely responsible for applying it in accordance with the provisions of the lease.

26. Tenant agrees to subordinate tenant's rights under this Lease to the lien or liens of any mortgage placed upon the premises and tenant agrees that, upon request of landlord or any mortgagee named in any such mortgage, tenant shall execute and deliver whatever documents may be necessary to carry out the intent of this paragraph.

27. Tenant shall comply with all laws, rules, and regulations regarding the use and storage of hazardous materials in, on, or around the premises. Tenant agrees to indemnify and hold the Landlord and its agents harmless from all claims and costs which may incur as a result of Tenant's failure to so comply

Signed and acknowledged in the presence of

Signed and acknowledged in the presence of

Husband and wife _____
or co-tenants _____
each must sign _____

Tenant(s)

ACCEPTED _____

Landlord

By _____

Rental Agent

Date _____

THE OHIO DIVISION OF REAL ESTATE MAY BE CONTACTED FOR INQUIRIES AND COMPLAINTS, AND FOR INFORMATION PERTAINING TO SECTION 4735.12 OF THE REVISED CODE (RECOVERY SPECIAL ACCOUNT) 180 EAST BROAD STREET, 14th FLOOR, COLUMBUS, OHIO 43215 TELEPHONE (614) 466-7064.

STATE OF OHIO
CUYAHOGA COUNTY

SS.

BEFORE ME a Notary Public in and for said County and State personally appeared

_____ Rental Agent for _____

_____ the landlord designated in the foregoing lease,
who acknowledged that he signed the foregoing instrument and that the same is the free act and deed of
such Corporation and said landlord and his free act and deed personally and as such Officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland,
Ohio, this _____ day of _____, 19____.

Notary Public